

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KARLA D. ALBERTY
Claimant

VS.

EXCEL CORPORATION
Respondent
Self-Insured

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Docket No. 175,246

ORDER

Claimant requested review of the Award dated May 7, 1996, entered by Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument October 9, 1996, in Wichita, Kansas.

APPEARANCES

Claimant appeared by her attorney, Chris A. Clements of Wichita, Kansas. The respondent, a qualified self-insured, appeared by its attorney, Eric K. Kuhn of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Administrative Law Judge found that claimant's date of accident was January 23, 1992. Claimant requested review of that finding. Date of accident is the only issue on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award entered by the Administrative Law Judge should be modified.

The question now before the Appeals Board is, "What is the date of accident for injuries resulting in upper extremity tendinitis and bilateral carpal tunnel syndrome when the claimant continues to work for the respondent in an accommodated job?"

In March 1993, claimant filed an Application for Hearing with the Director's office alleging a date of accident of "approx 1/92 and each and every working day thereafter thru present." At the regular hearing held in January 1996, the Special Administrative Law Judge indicated the issue to be addressed in the final Award was whether the date of accident was in January 1992 or February 1994. Although a reason is not given, the Special Administrative Law Judge apparently found February 1994 significant because that is the month claimant toured respondent's plant to be ultimately placed in a permanent accommodated position.

Claimant argues the date of accident should be either November 19, 1993, or February 19, 1994, because claimant arguably reached a medical plateau around those dates and was finally given a permanent accommodated position. Respondent contends the date of accident is on some date before July 1, 1993, and, therefore, this is an "old Act" case. As the parties point out in their briefs, the date of accident determines which version of K.S.A. 44-510e is applicable and the method of benefit payout. In its brief, respondent specifically cites January 23, 1992, as the appropriate date of accident for this proceeding. That date is somewhat significant because it is the first date that claimant saw Dr. Roger C. Trotter for right thumb complaints.

Respondent argues that claimant was injured performing a job requiring the use of knives which ended June 1, 1992. At that time claimant was transferred to a quality assurance position. Respondent asserts that claimant sustained no additional permanent injury after that transfer. Further, respondent argues that Condon v. The Boeing Co., 21 Kan. App. 2d 580, 903 P.2d 775 (1995), supports the finding of a date of accident before July 1, 1993, because the following three events occurred before July 1, 1993, any one of which would provide basis for designating it as the date of accident: (1) claimant was rendered unable to perform her regular job which required the use of knives, (2) claimant experienced an onset of symptoms which necessitated medical treatment, and (3) the manifestation of injury.

The Administrative Law Judge found the date of accident was January 23, 1992, because, according to the Administrative Law Judge, that is the date claimant was given restrictions by Dr. Trotter and the work claimant performed after that date would not have significantly contributed to claimant's injury.

After carefully reviewing the records stipulated into evidence, the Appeals Board finds the appropriate date of accident is February 19, 1994. The Appeals Board finds that claimant sustained injury to her upper extremities after January 23, 1992, and, therefore, rejects that date as the appropriate date of accident for this period of injury. Although it is true Dr. Trotter saw claimant on January 23, 1992, at that time claimant's complaints were limited to the right thumb which later resolved. Dr. Trotter's notes indicate claimant developed additional symptoms after January 1992 in her hands, arms, and shoulders. The doctor's notes also indicate claimant was performing a job that required her to grip meat and pull it towards her as late as September 1992. Also, the November 27, 1992, letter from respondent to Dr. J. Mark Melhorn indicates claimant's symptoms continued to worsen despite claimant's transfer from a wizzard knife operator to a quality assurance position in pack-off.

The Appeals Board finds that the appropriate date of accident for this proceeding is February 19, 1994. Claimant sustained injury to her upper extremities over a period of several years and continued to perform repetitive hand and arm movements at different times throughout that period until she was ultimately placed in a regular accommodated job in quality control on that date. Based upon the facts presented, February 19, 1994, appears to be the most appropriate date to be selected as the date of accident for this identifiable period of injury. Also, that date happens to coincide well with the functional evaluation provided by Dr. Melhorn on February 1, 1994, and the functional evaluation provided by Dr. Lawrence R. Blaty on June 20, 1994, for purposes of evaluating impairment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Jon L. Frobish dated May 7, 1996, should be, and hereby is, modified to designate February 19, 1994, as the appropriate date of accident for the period of injury addressed in this proceeding.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Karla D. Alberty, and against the respondent, Excel Corporation, a qualified self-insured, for an accidental injury which occurred February 19, 1994, and based upon an average weekly wage of \$432.10 for 35.28 weeks of permanent partial disability compensation at the rate of \$288.08 per week for an 8.5% permanent partial general disability making a total award of \$10,163.46 which is due and owing less any amounts previously paid.

All other orders entered by the Administrative Law Judge in the Award are herein adopted by the Appeals Board as its own to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
Eric K. Kuhn, Wichita, KS
Jon L. Frobish , Administrative Law Judge
Philip S. Harness, Director